IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

CRIMINAL APPEAL No. 738 OF 2001
(Old No. 568 of 1984)

Banshi Lal son of Sri Daulat Ram and another ...Appellants.

Vs

State of Uttarakhand .....Respondent.

Sri Durga Singh, learned Amicus Curiae for the appellant.
Sri Nandan Arya, learned A.G.A. for the State.

Date of decision:- 02.03.2007

A.F.R. (Approved for Reporting)

Not Approved for reporting

Date :-02.03.2007

Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

CRIMINAL APPEAL NO. 738 OF 2001.
(Old No. 568 of 1984)

1. Banshi Lal son of Sri Daulat Ram.
2. Daulat Ram son of Sri Thagu Ram.
Both resident of village Chakarpura, P.S. Khatima, district Nainital, now district Udham Singh Nagar.

….Appellants..

Versus

State of Uttarakhand.

….Respondent.

Sri Durga Singh, learned Amicus Curiae, for the appellant.
Sri Nandan Arya, learned A.G.A. for the State.

HON'BLE DHARAM VEER, J.

1. Appellants Banshi Lal and Daulat Ram have filed this appeal against the judgment and order dated 31.01.1984 passed by II Additional Sessions Judge, Nainital in Sessions Trial No.138 of 1981 State Vs Banshi Lal and others. The learned II Addl. Sessions Judge has convicted the accused Banshi Lal under Sections 452 and 324 of the Indian Penal Code, 1860 (for brevity, hereinafter referred as IPC) and sentenced him to undergo rigorous imprisonment for a period of two years under each count. Accused Daulat Ram was also convicted for the offence punishable under section 452 IPC and 324 read with section 34 IPC.and sentenced him to undergo rigorous imprisonment for a period of two years under each count. Both the sentences are directed to run concurrently. Charge was framed against four accused, namely, Banshi Lal, Ganesh Ram, Daulat Ram and Daya Ram but accused Ganesh Ram and Daya Ram are not found guilty by learned II

Addl. Sessions Judge and have been acquitted of the charges levelled against them.

2. Accused/appellant Daulat Ram has died and the appeal stands abated against him by the order of this Court dated 06.11.2006.

3. In brief, the prosecution story is that complainant Smt. Kalawati Devi wife of Shyam Lal, was sleeping in her house alongwith her husband Shyam Lal in one room and in another room her mother-in-law Smt. Parwati Devi and sister-in-law Smt. Geeta Devi were sleeping. On the night of 21/22.11.1980 at about 5.00 a.m. accused Banshi Lal, Ganesh Ram, Daya Ram and Daulat Ram, all resident of village Burhabag Chakarpur, P.S. Khatima, the then district Nainital (now district Udham Singh Nagar) who felt enmity with the complainant and her family members in connection with the marriage of Geeta Devi came at the house of complainant, entered into the house and tried to remove the blanket covering the complainant and her husband. Accused Ganesh Ram and Daya Ram pressed the complainant and her husband and accused Daulat Ram threw light of torch on their faces. At the same moment Banshi Lal gave two blows of Khukhari to Shyam Lal, the husband of the complainant with intention to kill him. One blow struck on the left cheek of Shyam Lal and the other on his left arm. One assault was also made on Smt. Kalawati but that his only on her head slightly as she shifted from the place at that time. The complainant and her husband raised alarm, on hearing the same, Smt. Parwati Devi and Smt. Geeta Devo who were sleeping in the second room of the house, also came on the spot. On seeing them the accused ran away. They were seen by witnesses

Gopal Ram and Tika Ram at the time of running away from the spot. The husband of the complainant sustained injuries. The chick FIR (Ext.Ka.3) and the General Diary report (Ext.Ka.4) were prepared by clerk constable Khasti Ballabh on the basis of the written report (Ext.Ka.2). The genuineness of Ext.Ka.3 and Ext.Ka.4 was admitted by the defence, so the prosecution did not examine the clerk constable Khasti Ballabh and the documents were exhibited. The investigation of the case was entrusted to Sri N.N.Pande, sub inspector who investigated the case, recorded the statements of witnesses and prepared the site plan of the place of incident vide Ext.Ka.5. After completing the investigation the charge sheet (Ext.Ka.6) was submitted by the Investigating Officer against the accused. The genuineness of Ext.Ka.5 and Ka.6 was admitted by the defence, so the prosecution did not examine the Investigating Officer and the documents were exhibited. One document (Ext.Ka.7) was also filed by the prosecution. This document is the copy of the order passed by the Sub Divisional Magistrate, Khatima on the application of Banshi Lal against Smt. Geeta Devi under section 97 Cr.P.C. After completing the investigation, the I.O. has submitted the charge sheet in the court of Munsif-Magistrate, Haldwani. The Munsif-Magistrate, Haldwani has committed the case to the Court of Sessions, Nainital vide order dated 22.07.1981 after giving the copies to the accused persons under section 207 Cr.P.C. The learned II Addl. Sessions Judge has framed the charge against accused Banshi Lal under section 307 and 452 IPC. The accused denied the charge and claimed trial.

4. I have heard Sri Durga Singh, Amicus Curiae for the appellant and learned A.G.A. for the State.

5. The prosecution has examined PW 1 Dr. J.K.Goel, PW 2 Smt. Kalawati Devi, PW 3 Shyam Lal and PW 4 Smt. Geeta Devi.

6. Injured Shyam Lal was medically examined by Dr. J.K. Goel who was posted as an Emergency Medical Officer, district hospital, Pilibhit on 22.11.1980 at 12.30 p.m. He found the following injuries on the person of the injured:

(i) Lacerated wound 12 cm X 3 cm X through and through on left side face lower part, blood clot present on left side tongue.

(ii) Incised wound 8 cm X 2 cm on left arm middle back and inner aspect.

7. Injury no.1 was kept under observation and X ray was advised by the doctor but neither any X ray plate nor any report has been filed by the prosecution. According to the doctor injury No. 1 was caused by some blunt weapon while injury No.2 was caused by some sharp edged weapon. The injury report (Ext.Ka.1) was duly proved by the doctor Injury No.1 is on the left side face lower part while injury No.2 is on the left arm. In the cross-examination when the court has asked the question, the doctor has stated that "चोट नं0 2 व 1 एक ही हथियार से भी आ सकती है यदि उसकी एक edge sharp हो और दूसरे किनारे वाली धार sharpt न हो।"

Dr.J.K. Goel has also stated that the abovesaid injury is possible on 22.11.1980 in the morning at 5.00 a.m. to 6 a.m.. In this manner Dr. J.K. Goel has proved the medical report (Ext.Ka.1) and also proved

that both these injuries are possible by one weapon as the case of the prosecution is that both the injuries were caused by appellant Banshi Lal through Khukhari.

8. Smt. Kalawati Devi (PW 2), wife of the injured Shyam Lal and the complainant of this case has narrated the entire prosecution case. In her statement she has specifically stated that on the night of 21/22.11.1980 at 5.00 a.m. was sleeping alongwith her husband in one room of the house and in the second room Smt. Geeta Devi and Smt. Parwati Devi were sleeping and that room was bolted from inside. She further stated that on 21/22.11.1980 at about 5.00 a.m. she heard movement of some persons and saw that four persons entered into their house, out of them Ganesh Ram and Daya Ram removed the blanket covering the husband of the complainant and also pressed both the complainant and her husband. Accused Daulat Ram threw torch light on their faces and Banshi Lal, present appellant assaulted her husband Shyam Lal by a Khukhari hitting him on his face and arm. It has also been stated by this witness that her sister-in-law Smt. Geeta Devi and mother-in-law Smt. Parwati Devi came on the spot after hearing the cries of the complainant and her husband and on seeing them, the accused ran away. Smt. Kalawati Devi has also stated that Tika Ram and Gopal Ram came on the spot after the accused had run away from the spot. The witness was cross-examined at length by the defence counsel but nothing material could come out from her cross-examination. She has also lodged the FIR in the P.S. Tanakpur of the abovesaid incident, i.e. Ext.Ka.2 on record. This FIR was

lodged at the P.S. on 22.11.1980 at 7.30 a.m. and the distance of the P.S. from the place of incident was 8 Kms.

9. P.W. 3 Shyam Lal is the injured witness and he stated specifically that four persons entered in his house and Daulat Ram threw a torch light on him and appellant Banshi Lal assaulted him by Khukhari hitting his left cheek and left arm. P.W.4 Smt. Geeta Devi has stated that Banshi Lal is her husband. He used to beat her. Due to this reason she left the house of her husband and was living in the house of his brother. Appellant Banshi Lal was annoyed due to this reason. She has also stated that at the time of the incident she was sleeping in another room with her mother Smt. Parwati Devi and in the second room Shyam Lal and Smt. Kalawati Devi were sleeping as she heard the noise from the room of his brother and ‘bhabhi’ then she and her mother went to the room where Shyam Lal and his wife Smt. Kalawati Devi were sleeping and saw Banshi Lal and Daulat Ram were there and there is a Khukhari in the hand of the appellant Banshi Lal. As she and her mother reached the room of Shyam Lal and Smt. Kalawati, the accused persons ran away from there.

10. After closure of the evidence of the prosecution, the statement of the accused Banshi Lal was recorded under section 313 Cr.P.C. In his statement he has admitted that Smt. Geeta Devi is his wife but he has denied the prosecution case. He has not produced any witness in his defence. After considering all the abovesaid evidence, the learned II Addl. Sessions Judge has convicted the appellant Banshi Lal under section 452 and 324 IPC and sentenced him to undergo rigorous imprisonment for a period of two years under each count.

11. The learned Amicus Curiae has submitted that the case has been fabricated against the appellant due to enmity. There is no evidence on the record to prove that the false case has been fabricated against the appellant Banshi Lal.

12. The learned Amicus Curiae has also submitted that the injury is not possible by Khukhari but from the statement of doctor and from the statement of the injured Shyam Lal and the eye witness Smt. Kalawati Devi it is well established beyond reasonable doubt that both the injuries are possible by one weapon. There is direct evidence in this case of the injured Shyam Lal and Smt. Kalawati, eye witness who has proves specifically that the injury was caused on Shyam Lal in his house through Khukhari by Banshi Lal appellant. Nothing material has come out from the cross-examination of these two witnesses on the basis of which the evidence of these witnesses could not be relied upon. The statement of PW 3 Shyam Lal injured is supported by PW 1 Dr.J.K. Goel. Hence it is well established by the evidence that injury was caused by appellant Banshi Lal to the injured Shyam Lal by means of a Khukhari and both the injuries are possible by Khukhari if the weapon is used in both the sides. There is also supporting evidence of Smt. Geeta Devi. Smt. Geeta Devi is the wife of appellant Banshi Lal and she is living with her brother Shyam Lal because appellant Banshi Lal was misbehaving her and was beating her.Due to this reason Banshi Lal has caused the injuries to Shyam Lal alongwith his father Daulat Ram. It is well established beyond reasonable doubt that Banshi Lal alongwith his father Daulat Ram entered in the house of Shyam Lal and the appellant Banshi Lal

caused injuries to Shyam Lal by Khukhari and the offence punishable under section 452 and 324 IPC is proved against him beyond reasonable doubt. The statements of PW 2 Smt. Kalawati Devi, PW 3 Shyam Lal and PW 4 Smt. Geeta Devi are reliable, trustworthy and believable.

13. For the reasons as discussed above this Court finds no error of law or that of fact committed by the trial court in convicting the appellant Banshi Lal u/s 452, 324 I.P.C. and sentencing him to rigorous imprisonment for a period of two years under section 452 and 324 IPC under each count. Trial Court has also passed order that Sentence awarded against Accused-appellant shall run concurrently. The appeal has no force and is liable to be dismissed.

14. The appeal is, therefore, dismissed. The conviction and sentence passed by the trial court dated 31.01.1984 is confirmed. The record of the trial court be sent immediately for compliance.

(Dharam Veer, J.)

Dated: 2.03.2007.
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